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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Amendment of the Commission's Rules to)
Permit Flexible Service Offerings in the)
Commercial Mobile Radio Services)

WT Docket No. 96-6

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast"), by its attorneys, hereby submits its reply comments on the above-captioned rulemaking proceeding.^{1/} Almost all of the comments support the FCC's assertion of the jurisdiction it has had over commercial mobile radio services ("CMRS") since Congress passed the Budget Act in 1993.^{2/} Comcast joins these commenters in urging the FCC to follow Congress' directive by making plain that it, and not the states, has exclusive regulatory authority over CMRS substantive regulation. The FCC's repeated failure to assert its jurisdiction over CMRS has resulted in dilatory legal wrangling and regulatory uncertainty. No reason exists to further impair CMRS providers' ability to move forward and provide the type of seamless, wide-area advanced services Congress envisioned when it passed the Budget Act — the public interest demands that the FCC act swiftly and state that it has and will assert exclusive jurisdiction over all substantive CMRS regulation.

1/ See First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-283 (released August 1, 1996) (the "Notice").

2/ See Omnibus Budget Reconciliation Act of 1993, Pub.L.No. 103-66, 107 Stat. 312, 392 ("Budget Act").

The FCC must, however, draw an important distinction between CMRS offered by incumbent local exchange carriers ("LECs") and other CMRS. Otherwise, incumbent LECs, most particularly the Bell Operating Companies ("BOCs"), will use their participation in the CMRS marketplace to integrate monopoly and competitive wireless services to bootstrap their wireline operations out of the states' regulatory purview. BOCs will attempt to evade state regulation of local exchange service if the FCC does not declare that the traditional state regulatory obligations of incumbent LECs in the provision of landline services are not vitiated by their provision in association with CMRS.

I. THE FCC MUST ASSERT ITS EXCLUSIVE JURISDICTION OVER ALL CMRS UNDER SECTION 332(c)(3).

Virtually all commenters agree that the FCC has exclusive jurisdiction over all substantive CMRS regulation under Section 332(c)(3), although some parties urge the FCC not to exercise its authority.^{3/} Only the National Association of Regulatory Utility Commissioners ("NARUC") asserts that the states have continuing regulatory authority over CMRS. NARUC's argument, that the FCC's decision to allow the states to continue regulating Basic Exchange Telephone Radio Service ("BETRS"), a fixed radio based service provided only by LECs, somehow shows that the states should have extensive jurisdiction over all "fixed" service applications of CMRS is, however, unsupportable on its face.^{4/}

^{3/} See, e.g., The Public Utilities Commission of Ohio at 3-6; The State of New York Public Service Commission Comments at 2-3; National Telephone Cooperative Association Comments at 4.

^{4/} See NARUC Comments at 3-7.

In Section 332 Congress gave the states authority to regulate CMRS providers only when they petition the FCC and demonstrate to the FCC's satisfaction both that market conditions are insufficient to protect consumers and that a CMRS service is a replacement for landline telephone service for a substantial portion of the telephone landline exchange service within a state.^{5/} By not classifying BETRS as CMRS initially, the FCC recognized that state regulation of BETRS — a local exchange substitute — is appropriate. The FCC's decision not to remove BETRS from the state regulatory purview in no way supports NARUC's claim that the states have authority over all forms of "fixed" CMRS. Indeed, the comments show that Congress specifically intended for CMRS providers to provide "basic telephone service" under exclusive federal jurisdiction as long as the service is provided in a competitive environment.^{6/}

Now is the time for the FCC to resolve the issue of CMRS jurisdiction in a manner consistent with Congressional intent. As the comments show, the only logical reading of the

^{5/} 47 U.S.C. § 332(c)(3)(A).

^{6/} As several commenters noted, the legislative history of Section 332(c)(3)(A) states:

the Commission should permit the States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.

legislative history and plain words of Section 332 results in a finding that the FCC has, and should assert, exclusive jurisdiction over all substantive CMRS regulation.^{7/}

II. BOC INTEGRATED CMRS-WIRELINE SYSTEMS MUST BE SUBJECT TO SAFEGUARDS.

The BOCs have already demonstrated that they intend to offer in-region CMRS and monopoly wireline services via integrated networks and bundled service offerings.^{8/} Here, BellSouth states that it should be the "nature of the package — the service offering itself — and not the status of the entity offering the package, which determines the proper regulatory treatment of the service offering."^{9/} Similarly, Bell Atlantic - NYNEX state that "[a]ll CMRS providers . . . should be permitted to offer a broad array of fixed services on a co-primary basis with mobile services."^{10/} These BOC proposals would allow the BOCs, the parties with market

^{7/} The FCC must not be swayed by the false calls of "regulatory parity" made by several states and the incumbent LECs. See State of New York Department of Public Service Comments at 2-3; The Public Utilities Commission of Ohio Comments at 4-5; Pacific Telesis Group Comments at 2; Bell Atlantic - NYNEX Comments at 3 n.7. Congress did not intend for CMRS providers, or indeed any competitive LEC, to live under the same level of regulation as incumbent LECs because by any objective analysis their market positions are very dissimilar. Parties that call for CMRS providers to be regulated as "local exchange carriers" ask the FCC to ignore the plain statutory language found in both the Budget Act and in the Telecommunications Act of 1996. These parties disagree with the statute and the policies reflected in the statute, something the FCC has no ability or authority to change.

^{8/} See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Non-Structural Safeguards Against Cross-Subsidy and Discrimination, Order, GN Docket No. 90-314, DA 96-256 (released February 27, 1996) (approving Pacific Bell's PCS Nonstructural Safeguards Plan that included integrated wireline - wireless offerings).

^{9/} BellSouth Comments at 4 (emphasis omitted).

^{10/} Bell Atlantic - NYNEX Comments at 3.

power sufficient to harm consumers and competition, to evade legitimate state cross-subsidy and discrimination regulation simply by integrating their wireless and wireline services.

These comments demonstrate obvious BOC attempts to "bootstrap" wireline local exchange services out of the state regulatory purview via the federal regulation over CMRS. As a legal matter, however, these arguments for regulatory parity without consideration of "the status of the entity offering the package" fail. The statutory standard in Section 332 for when a CMRS provider should be subject to state regulation recognizes that state regulation is appropriate, and indeed even necessary, for service providers with monopoly power. Incumbent LECs continue to have monopoly power such that "market conditions . . . fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory."^{11/} This potential to extend monopoly power into competitive wireless markets requires that states maintain regulatory oversight of integrated incumbent LEC-CMRS service packages. Consequently, any FCC decision to exercise its proper jurisdiction over CMRS offerings may differentiate the CMRS offerings of in-region BOC-CMRS affiliates to ensure BOC integrated CMRS-landline offerings remain subject to state jurisdiction.

Congress provided for federal CMRS regulation for competitive service providers, a category that does not currently include incumbent LECs. Because of continued BOC market power, the FCC's continued failure to come to closure on adequate safeguards for in-region CMRS will be devastating to emerging local exchange competition if the BOCs successfully use federal jurisdiction over CMRS to whipsaw states in their attempts to monitor and regulate integrated system offerings in dual wireless-wireline systems. The FCC thus must adopt a

^{11/} 47 U.S.C. § 332(c)(3)(A)(i).

bright-line rule establishing that all in-region landline services provided by BOCs will not be treated for regulatory purposes as an "integral part" of any CMRS services provided by those entities, regardless of how "fixed" CMRS is regulated.

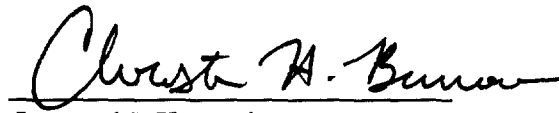
Finally, the FCC must quickly act in WT Docket No. 96-162 to establish appropriate safeguards for LEC in-region CMRS. As Comcast told the FCC in that docket, numerous complaints about anti-competitive BOC activity are on the record both at the FCC and in the states.^{12/} Without sufficient safeguards in place, BOC leveraging of monopoly market power will impede competition in local telecommunications markets. Evidence of continued BOC abuses shows that competition has not taken hold in the wireline marketplace sufficient to restrain BOC anti-competitive behavior, and BOCs will continue to have the ability and incentive to leverage their wireline market power into the wireless arena for some time to come. Effective safeguards, including structural separation and effective CPNI rules, are urgently needed to protect emerging wireless competition to landline services.

^{12/} Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Reply Comments of Comcast Cellular Communications, Inc., WT Docket No. 96-162 (filed October 24, 1996) at 2-9.

Comcast urges the FCC to quickly take the action it should have taken several years ago and assert its exclusive jurisdiction over CMRS. Congress intended for the FCC to promote a seamless wide area CMRS network, and the FCC must step up to the challenge.

Respectfully submitted,

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